

**OCT 18 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE VENTURA-DIAZ,

Defendant - Appellant.

No. 04-10579

D.C. No. CR-04-00654-1-MHM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Mary H. Murguia, District Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: NELSON, T.G., WARDLAW, and TALLMAN, Circuit Judges.

Jose Ventura-Diaz appeals the 39-month sentence imposed following his guilty plea conviction for transportation of illegal aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). We have jurisdiction pursuant to 18 U.S.C. § 3742(a).

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Ventura-Diaz's sentencing guideline range was established on the basis of facts alleged in the Information and admitted to by him at the change-of-plea hearing (base offense level of 18 under U.S.S.G. § 2L1.1(b)(5) for an offense involving intentionally creating a substantial risk of death to another person). However, Ventura-Diaz was sentenced under mandatory Sentencing Guidelines. Accordingly, we remand for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline's* limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 125 S. Ct. 738 (2005)).

**REMANDED.**